IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/12/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice N. KANNADASAN

W.A. No.192 of 1999 and W.A.No. 193 of 1999
and
C.M.P. Nos.2130 and 2131 of 1999

Tamil Nadu Minerals Limited ... Appellant

-Vs-

1. State of Tamil Nadu,
rep. by its Secretary
Industrial Department
Chennai 600 009

2. District Collector
Tirunelveli District
Tirunelveli

3. S. Vaikuntarajan
Managing Partner
V.V. Minerals
Keeraikaranthattu
Radhapuram Taluk
Tirunelveli District ... Respondents

Appeals under Cl.15 of the Letters Patent against the order dated
13-1-1999 made in W.P. Nos.13081 & 14116 of 1997

!For Appellant :: Mr. N.R. Chandran,
Senior Counsel
for M/s. Muthumani Doraisamy

^For Respondents :: Mr. A.L. Somayaji, Senior Counsel
for Mr. Peppin Fernando for R3
Mr. D. Krishnakumar, Spl.G.P.
Mr. R. Vijayakumar, G.A. for R1 & R3

:JUDGMENT

V.S. SIRPURKAR, J.

These two appeals are directed against the common judgment of the learned single Judge whereby, the writ petitions filed by the petitioner were allowed. In the said judgment, the learned single Judge has directed the first respondent Government to consider the application of the petitioner alone and pass the orders on merits thereupon. Few facts will highlight the controversy involved.

2. Appellant, Tamil Nadu Minerals Limited (hereinafter referred to as 'TAMIN'), is a Public Sector Undertaking while, the third respondent herein is also a concern engaged in mining business.

2.1. Third respondent applied for a mining lease of mining garnet sand over an extent of 8.96 hectares of land in un-serveyed costal promboke land lying in S.Nos.563 to 573 and 566 to 956 in Kuttam village, Radhapuram taluk, Tirunelveli Kattabomman District. This application was made on 21-1-1991 under Rule 22 of the Mineral Concession Rules, 1960 (in short 'the Rules') and a challan for that was given by the 2nd respondent Collector. The application was stated to be in the prescribed form as per the rules and, according to the petitioner, the application remained in cold storage for about six years.

2.2. The first respondent sent a communication dated 17-3-1997, which communication was in the nature of a notice, whereby, the third respondent was directed to rectify the few deficiencies found in the application form. This was under Rule 26(1) of the rules, the petitioner sent a reply on 31-3-1997, requesting the 1st respondent to give an opportunity to the petitioner to represent its case along with an advocate so that the petitioner could place all the relevant facts. It was also suggested in the reply that the 3rd respondent had complied with the said notice.

2.3. Another letter was sent on 13-6-1997 again reiterating the prayer for the grant of mining lease and by the letter dated 2-7-1997, the third respondent filed the necessary certificate as directed in the letter dated 17-3-1997. It was pointed out in the said letter dated 2-7-1997 that there was no defect at all in the application. All the letters sent by the 3rd respondent were argumentative wherein, it was tried to be shown that there was no breach on the part of the 3 rd respondent of any rules in respect of the said application for the grant of mining lease.

2.4. It is then pointed out that the 1st respondent Government did not grant the mining lease to the 3rd respondent but granted the same to TAMIN, appellant herein, by G.O. Ms. No.197 dated 10-7-1997. Not only this, but it subsequently rejected the application of the 3rde respondent by proceedings dated 26-8-1997. The rejection was on various grounds, including that the lease was already granted in favour of TAMIN.

2.5. Two objections were, therefore, raised firstly, challenging the grant of mining lease in favour TAMIN and secondly, against the order dated 26-8-1997, rejecting the application of the 3rd respondent. It was suggested in the writ petition that the grant of lease was against all the canons of fair play as in fact, the application for the mining lease was made by the 3rd

respondent as early as in the year 1991 and the respondent-Government allowed it to pend for six long years and ultimately, rejected the same on untenable grounds. It was also urged that the Government had tilted in favour of TAMIN inasmuch as the Government, after receipt of the application by the 3rd respondent, had toyed with the possibility as to whether TAMIN was interested in the said lease. It was then pointed out, on the basis of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 in short 'the Act') and the Rules that the mining leases were granted on 'first come-first served basis and that an application, which was received earlier had to be preferentially decided. In that view, it was pointed out that admittedly, the application of the 3rd respondent was earlier in point of time and yet, the lease was granted to the subsequent applicant TAMIN that too, in complete breach of the rules.

2.6. By way of defence, it was stated by the Government that there was no question of any favouritism being shown to TAMIN as TAMIN is not an individual concern. It was also pointed out that no rules were breached while considering the application of TAMIN and also while rejecting the application of the 3rd respondent. It was further pointed out that TAMIN being a Public Sector Undertaking, was entitled to have a preferential treatment. It was pointed out that the order passed, rejecting the application for grant of mining lease was correctly passed inasmuch as there was no valid compliance with the applicable rules.

2.7. Learned single Judge has accepted the contention raised by the petitioner that the State Government had shown favouritism to TAMIN in firstly not passing any orders on the application made the 3rd respondent, which was made as back as on 21-1-1991. Learned Judge also found fault with the whole procedure and held that the action on the part of the Government to grant the lease in favour TAMIN was inexplicable. Learned Judge further found that the application made by the 3rd respondent was in keeping with the prevalent rules and, therefore, by the principle of first come-first served, its' application was the only application in the field, which was liable to be considered in its' favour.

2.8. In this view, the learned Judge allowed both the writ petitions holding that the order, dated 26-8-1997, rejecting the application of the 3rd respondent was unsustainable. The learned Judge, therefore, gave the directions for consideration of the application of the 3 rd respondent, treating it to be the lone application for the grant of mining lease. In short, the learned Judge has directed the lease to be granted in favour of the 3rd respondent.

2.9. Being aggrieved by this, the present appeals have been preferred by TAMIN.

3. Shri N. R. Chandran, learned Senior Counsel/Advocate General, appearing on behalf of TAMIN, has taken us through the relevant provisions of the Act and the Rules. There is no doubt that garnet is a mineral and is covered under the provisions of the Act and the Rules.

3.1. The first and the foremost argument of Shri Chandran was that the whole approach of the learned single Judge was wrong inasmuch as the learned Judge has ignored the mandatory rules and thereby, an error has crept in even in the findings of facts. Learned counsel is at pains to point out that there was no question of any favouritism in the whole affair by the Government being shown to TAMIN as firstly TAMIN is not an individual concern and is only a Public Sector Undertaking. He further argues that the learned Judge has ignored the mandatory provisions of Rule 22 and more particularly the proviso thereunder. He argues that it was an admitted position that along with the application the 3rd respondent had merely accompanied the affidavit in place of the mandatory mining No Due Certificate in the prescribed form. Relying on the proviso, the learned counsel argues that the 3rd respondent could undoubtedly make an application without filing the No Due Certificate as also without filing the affidavits of the individual partners (since the 3rd respondent partnership firm was an unregistered firm). However, the failure on the part of the 3rd respondent to file No Due Certificate would invalidate the application because of the specific language of the rule 22 and more particularly proviso thereto. Learned counsel, therefore, points out that if the application itself had become invalid, there was no question of its being considered and, therefore, the learned Judge was in error in holding that the Government or the Collector, as the case may be, deliberately kept the 3rd respondent's application pending and then sought the application from TAMIN.

3.2. It is the contention of the learned senior counsel that when the offer was made to TAMIN and when ultimately received the application for mining on 7-4-1995, there was no valid application by any party in the field and, therefore, in fact the application of TAMIN was the only and the prior application. He points out that a invalid application could not have been worked on by the Government and had to be disposed of under the provisions of Rule 26 but, it was not necessary that such a rejection of that application should have preceded the grant of mining lease in favour of TAMIN. He points out that admittedly, there was a breach of Rule 22 on the part of the 3rd respondent and, therefore, the Government was perfectly justified in granting the lease in favour of TAMIN.

3.3. Learned counsel also urges by way of his second contention that the learned Judge should have not taken the exercise to compare the inter se capabilities of the 3rd respondent and TAMIN and should not have given the finding that the 3rd respondent was a better suited person for the grant of mining lease.

4. As against this, Shri A.L. Somayaji, learned senior counsel appearing on behalf of the 3rd respondent, urged that the learned single Judge had correctly allowed the writ petitions as there was clinching evidence on record to suggest the favouritism shown by the Govenment in favour of TAMIN. Learned counsel argues that if the application of the 3rd respondent had become invalid, there was no necessity for the Government to ultimately reject the same by passing an order dated 26-8-1997, which fact was even posterior to the grant of lease in favour of TAMIN. Learned counsel points out that the authorities were merely making a show of complying with the provisions and that the lease was rightly ordered to be granted by the learned Judge in

favour of the 3rd respondent.

5. On this backdrop, it will be for us to see as to whether the learned Judge was right in allowing the writ petitions. For better understanding the controversy, few provisions of the Act and the Rules will have to be looked into.

6. Sec.11 of the Act creates a preferential right for mining lease where a person obtains the prospecting licence provided, of course, that hehas actually undertaken the prospecting operations and has not committed any breach of the terms and conditions of the prospecting operations. Subsection (2) is as under:
"Subject to the provisions of sub-section (1) where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later"
The proviso to this section and sub-section (3) are not relevant for the present controversy. However, sub-section (4) provides notwithstanding anything contained in sub-section (2) but subject to the provisions of sub-section (1), State Government may have, for reasons to be recorded and with the previous approval of the Central Government, grant a prospecting licence or a mining lease to an applicant, whose application was received later in preference to an applicant whose application was received earlier.

7. In the beginning, learned senior counsel Shri Chandran tried to take recourse under Sec.4 by suggesting that even if it was held that the application of the 3rd respondent was received earlier to the application of the appellant, the State Government could still, by giving special reasons, choose to grant the lease to the appellant in preference to the 3rd respondent.

8. The argument is clearly incorrect as for that purpose, a previous approval would be required by the Central Government and, admittedly, no such previous approval has been there. Learned single Judge has also affirmed that position and, in our opinion, correctly.

9. Alternatively, learned senior counsel Shri Chandran relied on Rule 22 under Chapter V. The rules contained in Chapter V are concerning the grant of lease in respect of land in which the minerals vest in the State Government. There is no difficulty to hold that the minerals concerned in this case do vest in the Government. That position has not been questioned by anybody. Learned senior counsel pointed out that Rule 22 envisages that every application for the mining lease of such minerals has to be made in Form I and with few accompaniments such as a valid clearance certificate, in the form prescribed by the State Government, on payment of mining dues, such as, royalty or dead rent and surface rent payable under the Act or the rules made thereunder from that Government or any officer or authority authorised by that Government in this behalf. Proviso to clause (d) to rule 22 provides that in case the applicant is a partnership firm or a private limited company, such certificate shall be by all partners of the partnership firm or, as the case

may be, all members of the private limited company. The other documents which are the necessary accompaniments are given in clauses (e) to (h), which are not relevant for the present controversy. Our attention, however, was drawn to the fourth proviso to Rule 22, which is as under:

"Provided that a properly sworn affidavit stating that no dues are outstanding shall suffice subject to the conditions that the certificate required as above shall be furnished within ninety days of the date of application and the application shall become invalid if the party fails to file the certificate

within the said ninety days." ( emphasis supplied)

The rest of the provisos to rule 22 are not relevant for the present controversy.

10. Shri Chandran also points out Rule 23 wherein it is provided that every application for grant or renewal of mining lease has to be acknowledged in Form D within three days and the receipt therefor has to be given. Rule 26 deals with the refusal of the application for the grant or renewal of mining lease. Since we are dealing with the order dated 26-8-1997, refusing the application of the 3rd respondent for grant of mining lease that rule would be necessary to be seen. Rule 26 reads as under:

"26. Refusal of application for grant and renewal of mining lease.- (1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

(2) An application for the grant or renewal of a mining lease made under rule 22 or rule 24-A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all mat l particulars, or is not accompanied by the documents referred to in sub-clauses (d), (e), (f), (g) and (h) of Cl.(i) of sub-rule (3) of rule 22.

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than sixty days from the date of receipt of said notice by the applicant."

11. The contention raised before us is that even if the application by the 3rd respondent was prior in point of time, the same was not accompanied with by the necessary documents in terms of rule 22(d), which we have quoted above. He points out that initially though this application was valid, it was rendered invalid as within ninety days of the date of application, the certificate as required by rule 22(d) regarding the payment of minding dues was not filed by the 3rd respondent within timeframe of ninety days of filing of the application. Learned senior counsel, therefore, argues that the application dated 21-1-1991, though remained a valid application till ninety days, because of the default committed by the 3rd respondent in not submitting the valid clearance certificate as required under clause (d) of rule 22, the application became invalid. Learned counsel, therefore, urges that such an invalid application cannot create a preferential right under Sec.11(2) of the Act, which we have quoted above and, in our opinion rightly. In order to

receive a preferential treatment, the application would have to be in order. Stretching the argument further, learned senior counsel submits that, therefore, if the application of TAMIN was made on 7-4-1995, that was the only valid application lying with the Government and as such, there was no necessity of considering the application of the 3rd respondent or giving it a preference under Sec.11(2) of the Act.

12. There could be no doubt that an application under Sec.10 for a mining lease would have to be in order because the language of Sec.1 0 itself suggests that such application for mining lease has to be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee. On this backdrop, when we see the language of Rule 22(1), it is as under:
"22. Application for grant of mining lease.- (1) An application for the grant of a mining lease in respect of land in which the mineral vest in the Government shall be made to the State Government in Form I, through such officer or authority as the State Government may specify in this behalf.
We have already pointed out that under subsection (3) etc., every application has to be accompanied by the fee of Rs.500/- and the documents such as valid clearance certificate, etc. It is undoubtedly an admitted position that the application made by the 3rd respondent, though was in the prescribed form, did not have with it the certificate regarding the payment of mining dues. It also did not have the affidavits of all the partners, which is required under proviso to rule 22 (e). It is an admitted position again that the 3rd respondent is an unregistered firm. Therefore, for making a valid application under Rule 22, along with the application in the prescribed form, the documents suggested in Rule 22(3) were bound to be there. It is again true that the 3rd respondent could still file an application without those documents provided that an affidavit is filed in terms of the fourth proviso to Rule 22, which we have quoted above. It is also an admitted position that in spite of ninety days period, no such No Due Certificate either in respect of the firm and also in respect of the partners individually were filed by the 3rd respondent. Therefore, there could be no dispute that the application itself became invalid.

13. We must take into consideration, the prevalent competition in the filed of mining of minerals. With the preferential right given under Sec.11(2), it cannot be countenanced that a party, who makes an application in any form other than the prescribed form and should not comply with the clause (3) of Rule 22 and yet, should get the preferential right as envisaged in Sec.11(2). In our opinion, learned senior counsel for the appellant is absolutely right in arguing that Secs.10 and 11 and Rule 22 would have to be read together and such a conjoint reading would suggest that where an application is to be preferred within the meaning of Sec.11(2), such application has to be a valid application. As rightly pointed out by the learned counsel, otherwise, devastating results would ensue in the sense, any person would reserve an area for mining by making an defective application and in that case, the mere fact of making the application would have to be held as sufficient for getting the preferential right. That does not appear to be the logic behind the provisions. The rule has shown some elasticity in the matter also in the sense that such defective application could remain a valid

application for a period of ninety days but where the necessary documents like Valid Clearance Certificate, etc. are not filed within the ninety days' time-limit, the law itself provides for the invalidation of the said defective application. In our view, if the application so becomes invalid due to the operation of the aforementioned proviso then, there will be no question of its getting any preference. Once this position is clear then, it knocks out the very basis of the 3rd respondent's claim because the preferential treatment is the only basis of the 3rd respondent's application for grant of lease.

14. Learned single Judge has found fault with the application of the 3rd respondent being allowed to pend for six long years and, in the meantime, considering the possibilities of the lease being granted to TAMIN. It sounds from the judgment of the learned single Judge that the learned Judge did not approve of this favouritism shown in favour of TAMIN while studiously ignoring the preferential claim of the 3rd respondent. In fact, the whole judgment is based on this circumstance of the prior application made by the 3rd respondent and the Government's apathy towards that application for six long years. In our opinion, learned senior counsel for the appellants is undoubtedly right in contending that the Government could not have acted on the application of the 3rd respondent once it is found that the mandatory accompaniments to the application were not there and were also not made available in ninety days' time. The application had clearly become invalid so that there was no question of its consideration at all. At any rate, even if such application remained pending on record as an invalid application, the 3rd respondent could not have claimed a preferential treatment on the basis of the same.

15. Shri Somayaji, learned senior counsel for the 3rd respondent, urged that the State Government or, as the case may be, TAMIN did not take this stand and Rule 22(d) and the proviso was not pressed into service by either of them and, therefore, we should not allow the appellant to urge this point before us.

16. We simply fail to follow the logic behind this argument. It was not for any party to take a particular stand because the invalidation of the application is the natural fall out of the proviso. Whether the stand was taken or not, the fact remains that the application of the 3rd respondent becomes invalid by the force of the language of the proviso if the necessary documents are not filed within ninety days. Indeed, we do not see anything unreasonable also in this rule and the proviso. A person, who has to take the mining lease, if he is already in the mining operation, must approach for a new mining lease without dues. That is a perfectly reasonable provision and the mandatory nature of this provision is highlighted because of the proviso to Rule 22(d). When we see the judgment of the learned single Judge, it is apparent that proviso to Rule 22(d) is not even distantly referred to in that judgment and the learned Judge proceeded on the basis that a valid application was all the while pending for six long years and the Government was apathetic to it and instead the Government showed favour to TAMIN by firstly making enquiries with TAMIN regarding their readiness to mine garnets and other by-products.

17. The keenness of the Government on this question can be understood

because of the fact that precious minerals are to be found in the beach sand besides Garnet. They being Ilminite, Rutile, Leucoxene, Zirkon, Sciliminite, Monazite. Barring Garnet and Sciliminite, other minerals named above are the 'prescribed substance' under Atomic Energy Act, 1962 and under the said Act, it is mandatory to obtain licence from the designated competent authority in the Department of Atomic Energy for work of any mines and minerals from which prescribed substances can be obtained. Such licence is necessary even for the acquisition, production, possession, use, disposal, export or import of such prescribed substances. Between 1991-98, it was the natural policy that the mining and protection of prescribed substances would be reserved for the Public Sector Undertakings though that policy has been given a go-by in late 1998. Undoubtedly even then a selective entry of the private entrepreneurs was permitted. However, considering the growing demand for these minerals, which were extremely precious and covered under the Atomic Energy Act, it cannot be treated to be unusual that the State Government would vie the possibility of someone taking up the mining of these minerals along with Garnet and Sciliminite. If the application of the 3rd respondent was lying as an invalid application, nothing was wrong if the Government, which was keen for the precious minerals, tried the possibility of such a mining operation from TAMIN, which is a Public Sector Undertaking.

18. Learned senior counsel for TAMIN has taken us through the statement of Industrial Policy pertaining to Public Sector Undertakings and also pointed out that the public enterprises were given a pride place in the formation and promulgation of that policy. Paragraph 32 of the Industrial Policy dated 24-7-1991 was read out to us so also the resolution dated 6-10-1998 published in Gazette of India vide No.8/1(1)/97-PSU/1422. It is from this that the learned senior counsel pointed out that it was not unnatural on the p art of the State Government to vie the possibilities of the mining operation through Public Sector Undertakings like TAMIN, etc. particularly because of the vast coastal area and the sea-beach. The judgment of the learned single Judge is silent on this point. We have referred to this fact only to suggest that it was not unnatural on the part of the State Government to try the Public Sector Undertakings like TAMIN for mining the precious minerals which were of national importance owing to their utilisation in the Atomic Research Stations, etc. We, therefore, do not see any oblique motive on the part of the Government when they tried the possibility of the mining vide their letter dated 11-11-1994 sent to TAMIN enquiring whether TAMIN was interested in mining of Garnets and other by-products. It is to be seen that this offer was replied in the affirmative by TAMIN by their communica tion dated 8-12-1994 and the application for the mining came to be filed on 7-4-1995. On the backdrop of the facts and law, which we have pointed above, we do not see anything wrong if the State Government considered the said application of TAMIN and granted them the lease on 10-7-1997.

19. Shri Somayaji tried to get out of this situation by suggesting that the application made by TAMIN was also defective as it was not accompanied with the Income Tax certificates as required under Rule 2 2(3)(f). We have mentioned this argument only to be rejected because, the non-filing of such income-tax particulars is not covered by the aforementioned proviso regarding the certificates relating to the payment of mining dues. It was

tried to be shown by Mr. Somayaji that the Government in fact considered all the three application, i.e. one by the 3rd respondent, other by TAMIN and still third by some other party and chose to grant the lease in favour of TAMIN though 3rd respondent was a better suited party for mining. Learned senior counsel tried to suggest that they were having vast experience in the mining operation as they were already in this field and in past TAMIN had declined to take up the lease for mining Garnet, etc.

20. We find that in the impugned judgment also, there is some reference to the inter se merits between the 3rd respondent and TAMIN. We do not think that it will be for this Court to compare the inter se merits between the contesting parties and indeed, there is no question of the comparative merit in this case because, on the relevant date, TAMIN was the only party, whose application was pending. Again, it will be only for the Government and the experts in the mining field to opine regarding the inter se merits of the parties. We, therefore, desist from giving any such finding, nor do we agree with the finding of the learned single Judge that the 3rd respondent was a better suited person for the mining lease.

21. This takes us to the last question, which was argued by Shri Somayaji that while the leave in favour of TAMIN was granted on 10-7-1 997, it was only later on the application of the 3rd respondent came to be rejected by order dated 26-8-1997, which order was also impugned in the writ petitions filed by the 3rd respondent. The contention raised was that the order was passed only by way of completing the formality of rejecting the application. Learned senior counsel also urged that that would go to show that the Government never treated the 3rd respondent's application to be invalid and otherwise, there would not have been an exercise on the part of the Government to pass an order refusing the application. To answer this argument, one needs only to look to Rule 26, which we have quoted above.

22. Under Rule 26(1), before refusing an application made for grant and renewal of mining lease, an opportunity is to be given by the State Government of being heard as also the reasons are required to be recorded for refusing to grant or renew the mining lease. Sub-rule (2) provides that an application for grant of a mining lease is not to be refused only on the ground that Form I or Form J, as the case may be, is not complete in all the material particulars or the application is not accompanied with the documents referred to in sub-clauses (d) to (h) of Rule 22(3). From this learned senior counsel argues that the State Government could not have refused the application merely because the documents like No Due Certificate, etc. were not furnished or were not made available by the 3rd respondent. Learned counsel also argues that under sub-rule (3) an opportunity has to be given to complete all the material particulars and once such notice is given, the documents should be furnished within sixty days from the date of receipt of the said notice. He points out, therefore, that the application, which was prior in time, made by the 3rd respondent could not just be allowed to pend and then refused that too, after the lease was already granted to TAMIN and further such refusal could not be depended upon the fact that the lease having already been granted in favour of TAMIN.

23. The argument is clearly incorrect. There is a clear difference in the application becoming invalid on account of the noncompliance in terms of the proviso to Rule 22(d) and the ultimate refusal of that application. Even if the joint reading of Rule 22(d) proviso and Rule 26 would clearly bring out a position that where the application becomes invalid, it shall not be refused merely on that ground and an opportunity should be given to the party to complete the formalities of filing the necessary documents. Here that opportunity has been given when the notice dated 17-3-1997 has been served on the 3rd respondent. It is an accepted position that the 3rd respondent did not comply with the notice for sixty days because the necessary documents regarding the no mining dues, etc. came to be available only on 2-7-1997, which was much beyond sixty days' time. Even if it is to be considered that the notice dated 17-3-1997 was complied with, in our opinion, the application was refused for good reasons and the grant of lease in favour of TAMIN regarding the same site would certainly be a good and sufficient reason for refusing the application of a rival party like the 3rd respondent. We are of the opinion that TAMIN being a Public Sector Undertaking and there being a possibility of the prescribed substances being found in the mining of Garnet, the State Government was quite justified in preferring a Public Sector Undertaking for the mining operation in keeping with the policy though we must hasten to add that there was no question of any preference being given particularly when such a preference is not possible to be read from the rules. However, one cannot be unmindful to the fact that when the lease was being considered, the application of the 3rd respondent had already become invalid. It was only in pursuance of Rule 26 that the same came to be refused and, in our opinion, the subsequent refusal of that application would not by itself invalidate the order of refusal nor would it have the effect of rejuvenating the invalid application of the 3rd respondent. This aspect has also not been considered by the learned single Judge who has concentrated on the fact that the 3rd respondent's application was rejected only after the lease was granted in favour of TAMIN only to complete the formalities. There are clearly two stages which emerge out from the rules. The first being the application being rendered invalid and the second being its' refusal under Rule 26. There could be number of other reasons besides the non-compliance with the necessary conditions under Rule 22 for refusing the application and that is precisely what has been done by the State Government in refusing the application by giving other reasons like grant of lease in favour of TAMIN and TAMIN being a Public Sector Undertaking. We, therefore, do not find anything wrong in the action of the State Government.

24. In short, we are not in a position to agree with the impugned judgment and would choose to set it aside. We are also of the clear opinion that the writ petitions filed by the 3rd respondent herein did not deserve to be entertained and are liable to be dismissed. We accordingly order the dismissal of the writ petitions. The writ appeals are allowed. Under the circumstances, however, we pass no orders as to the costs. Connected CMPs are closed.

Index:Yes
Website:Yes

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